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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
CUMMINGS BOAT COMPANY, INC., )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB Nos. 77-73 and 77-129  
FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of two \$250 civil penalties issued to appellant for the alleged violations of Section 9.15(a) of respondent's Regulation I, came before the Pollution Control Hearings Board, W. A. Gissberg, Chairman (presiding), Dave J. Mooney and Chris Smith at a formal hearing in Tacoma on November 4, 1977.

Appellant appeared through its attorney, Kenneth S. Kessler; respondent appeared through its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits,

1 and having considered the contentions of the parties, the Pollution  
2 Control Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCV 43.21B.260 respondent has filed a certified  
6 copy of its Regulation I and amendments thereto which we notice.

7 II

8 Appellant, Cummings Boat Company, Inc., is in the business  
9 of boat building and repair at its location on 3017 Ruston Way in  
10 Tacoma. Appellant does not process pleasure boats, but confines  
11 its activities to large commercial and government boats.

12 III

13 Appellant has been cited for two previous violations of  
14 Section 9.15(a) of Regulation I in 1975 for which appellant was  
15 assessed one civil penalty in the amount of \$50.00. After the  
16 first violation, appellant was given a copy of respondent's  
17 "Guidelines for Abrasive Blasting" which described methods to  
18 minimize the "chances of causing violations" of Regulation I.

19 The materials used in appellant's abrasive blasting operation  
20 is copper slag from the Tacoma Smelter. Such material can be  
21 used once without breaking up and if so used, is satisfactory for  
22 meeting the requirements of the foregoing Guidelines.

23 IV

24 On April 11, 1977 while driving along Ruston Way, respondent's  
25 inspector observed airborne dust in appellant's yard. Upon further  
26 investigation, the inspector came upon an open 70 foot wide by

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 120 foot long "shed" in which appellant's employees were cleaning  
2 a 20' x 30' barge hull by abrasive blasting. The resulting dust,  
3 which the inspector assumed contained particles of rust, paint,  
4 and abrasive materials, entered the outdoor atmosphere through open  
5 doors in the shed. Thereafter, appellant was issued a notice of  
6 violation from which followed the assessment of a \$250 civil penalty  
7 for causing or permitting "dust becoming airborne from abrasive  
8 blast cleaning of barge hull."

9 V

10 On August 18, 1977 while driving along Ruston Way, respondent's  
11 inspector noticed dust rising 20 to 30 feet in the air from abrasive  
12 blast cleaning of two 75' x 17' boats in an open area. The inspector  
13 assumed that the dust observed contained rust, paint, and small  
14 particles of abrasive materials. Although appellant's operators  
15 were suitably protected, there were no control techniques used to  
16 confine dust and prevent its entry into the atmosphere. Appellant  
17 was issued a notice of violation for "sandblasting barge hulls without  
18 taking precautions to prevent particulate matter from becoming  
19 airborne" from which followed a \$250 civil penalty for "sandblasting  
20 operation."

21 VI

22 Section 9.15(a) of Regulation I makes it unlawful for any  
23 person to cause or permit particulate matter to be "handled,  
24 transported or stored" without taking reasonable precautions to  
25 prevent such matter from becoming airborne. Section 3.29 provides  
26 for a civil penalty of up to \$250 per day for each violation of

1 Regulation I.

2 VII

3 Respondent's inspector considers that total enclosure of  
4 appellant's abrasive blasting would constitute such reasonable  
5 precaution which could prevent the instant violations. Appellant,  
6 on the other hand, is most concerned about the cost of building  
7 such an enclosure for the large vessels it services, the safety of  
8 its employees, and compliance with regulations from other agencies.  
9 On the dates of the instant violations, no precautions were taken  
10 to prevent particulate matter from becoming airborne.

11 VIII

12 Any Conclusion of Law which should be deemed a Finding of Fact  
13 is hereby adopted as such.

14 From these Findings, the Pollution Control Hearings Board  
15 cores to these

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over the persons and over the  
19 subject matter of this proceeding.

20 II

21 "Handled" within the meaning of Section 9.15(a) means "to  
22 control, direct, to deal with, to act upon . . . ." Black's  
23 Law Dictionary (4th ed. 1968) p. 845. See Webster's Third New  
24 International Dictionary (1971) p. 1027. Thus appellant, by  
25 controlling, directing, dealing with, and acting upon the paint  
26 and rust particles on the barge hull, "handled" particulate matter.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Further, such particulate matter, when airborne, need not leave  
2 property boundaries because the gravamen of a violation of  
3 Section 9.15(a) is that no reasonable precautions were taken to  
4 prevent particulate matter from becoming airborne. Appellant's  
5 contentions contrary to the foregoing are without merit.

6 III

7 Appellant's motion to dismiss on the ground that the notice  
8 of violation and notice of civil penalty are inaccurate, having  
9 used the term "sandblasting" rather than "abrasive blasting," for  
10 example, is not well taken. The motion can only be directed to the  
11 August 18, 1977 incident where the term "sandblasting" was used.  
12 Appellant had an opportunity to seek clarification of the  
13 notice through pre-hearing procedures. WAC 371-08-145. Further,  
14 the respondent's evidence was received without objection and the  
15 notices can be deemed to be amended to conform with the proof.  
16 CR 15(b). Finally, appellant does not claim surprise or prejudice,  
17 nor has it requested a continuance to enable it to meet the evidence.

18 IV

19 Appellant violated Section 9.15(a) of Regulation I on  
20 April 11 and August 18, 1977 by causing particulate matter  
21 including rust and paint particles to be handled without  
22 taking reasonable precautions to prevent them from becoming  
23 airborne. The penalties are reasonable in amount and should  
24 be affirmed.

25 V

26 Any Finding of Fact which should be deemed a Conclusion of  
27 Law is hereby adopted as such.

1 From these Conclusions the Pollution Control Hearings Board  
2 enters this

3 ORDER

4 The two \$250 civil penalties are affirmed.

5 DATED this 21<sup>st</sup> day of November, 1977.

6 POLLUTION CONTROL HEARINGS BOARD

7 W. A. Gissberg  
8 W. A. GISSBERG, Chairman

9 Dave J. Mooney  
10 DAVE J. MOONEY, Member

11 Chris Smith  
12 CHRIS SMITH, Member

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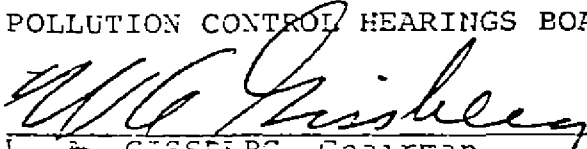
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6 POLLUTION CONTROL HEARINGS BOARD

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8 W. A. GISSELG, Chairman

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10 DAVE J. MCCREARY, Member

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12 CHRIS SMITH, Member

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